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OFFICE OF PETITIONS

In re Application of :
Kenneth Buechler : DECISION ON PETITION
Application No. 09/613,650 :
Filed: July 11, 2000 :
Atty Docket No. 071949-1307 :

This is in response to the REQUEST FOR RECONSIDERATION OF A
DECISION ON PETITION filed August 2, 2006.

On February 7, 2006, the Office mailed a non-final Office action
in the above-identified application. This Office action set a
three-month period for response, with extensions of time
obtainable under § 1.136(a).

By decision mailed July 24, 2006, the "petition to accept a
filing as of its date of facsimile transmission in accordance
with 37 CFR §1.8" filed June 19, 2006, was dismissed. The
evidence submitted included neither a statement from the person
who transmitted the facsimile attesting to its successful
transmission nor a facsimile transmission confirmation.

Nonetheless, because the petition was filed on June 19, 2006,
which was within the period for reply to the Office action
mailed February 7, 2006, the response was accepted as timely
filed with a petition for extension of time for response within
the second month (and extension fee).

On instant request for reconsideration, applicants supply a copy
of their receipt evidencing successful facsimile transmission on
the date alleged, May 8, 2006. Applicants request refund of the
two-month extension of time fee.

With respect to the merits of the request for reconsideration,
37 CFR 1.8(b) provides that:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement, which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Petitioner's evidence has been reconsidered, and found persuasive that the response should be considered timely submitted pursuant to § 1.8(b).

However, it is noted that effective December 1, 2003, the Office required, with few exception, that all patent application related correspondence transmitted by facsimile must be directed to the central facsimile number, then (703) 872-9306. See *Centralized Delivery and Facsimile Transmission Requirements for Patent Application Related Correspondence*, 1275 OG 200 (October 28, 2003). Effective July 15, 2005, the centralized facsimile number was changed to (571) 273-8300, with all facsimile transmissions sent to the old facsimile number being forwarded to the new number. See *New Patents Central FAX Number and Updated Lists of Exceptions to the Centralized Delivery and Facsimile Transmission Policy for Patent Related Correspondence*, 1296 OG 76 (July 12, 2005). Moreover, in the Office action mailed February 7, 2006, the examiner noted the centralized

facsimile number of 703-872-9306. However, applicants, according to their own evidence, faxed the response to an incorrect USPTO facsimile number, 571-273-0814.

In this instance, the response will be accepted as filed on May 8, 2006¹ and the two-month extension of time fee refunded to Deposit Account No. 50-0872, as authorized. However, any future failure to use the proper facsimile number may not result in withdrawal of the holding of abandonment. It is further noted that the Office is not precluded from considering the failure to use the proper facsimile number as a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application within the meaning of 37 CFR 1.704.

The petition under § 1.181 is GRANTED.

No fee is required on petition under § 1.181.

Technology Center AU 1743 has been advised of this decision. The application is, thereby, being forwarded to the examiner for further examination in due course.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
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Office of Petitions

¹ This decision corrects the decision mailed July 24, 2006, to the extent that it makes clear that this application was never considered abandoned for failure to file a reply to the February 7, 2006 Office action.